



(Billing Code 5001-06)

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 212, 237, and 252

RIN 0750-AI24

**Defense Federal Acquisition Regulation Supplement: Service
Contract Reporting (DFARS Case 2012-D051)**

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act for Fiscal Year 2008. The rule proposes to require contractors to annually report, using an online DoD database, service contract data at the end of the Government fiscal year or at the end of contract performance, whichever comes first.

DATES: Comment Date: Comments on the proposed rule should be submitted in writing to the address shown below on or before [Insert date 60 days after date of publication in the **FEDERAL REGISTER**], to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2012-D051, using any of the following methods:

o Regulations.gov: <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by entering "DFARS Case 2012-D051" under the heading "Enter keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "DFARS Case 2012-D051." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "DFARS Case 2012-D051" on your attached document.

o E-mail: osd.dfars@mail.mil. Include DFARS Case 2012-D051 in the subject line of the message.

o Fax: 571-372-6094.

o Mail: Defense Acquisition Regulations System, Attn: Ms. Janetta Brewer, OUSD(AT&L)DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301-3060.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check www.regulations.gov, approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Janetta Brewer, Defense Acquisition Regulations System, OUSD(AT&L)DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301-3060. Telephone 571-372-6104.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is proposing to revise the DFARS to implement section 807 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2008, Public Law 110-181 (10 U.S.C. 2330a), which requires the Secretary of Defense to submit to Congress an annual inventory of the activities performed during the preceding fiscal year pursuant to contracts for services for or on behalf of the DoD, to include direct labor hours and cost data collected from contractors.

II. Discussion

This rule proposes to require contractors to report service contract direct labor and corresponding dollar value data for prime contractors and subcontractors in the Enterprise-wide Contractor Manpower Reporting Application (ECMRA) database annually or at the end of contract performance, whichever comes first. Data collected via the ECMRA database will enable DoD to identify and track the services provided by contractors and comply with section 807 of the NDAA for FY 2008.

The rule proposes to amend DFARS parts 212, 237, and 252 as follows:

- At DFARS 212.301, the proposed DFARS clause 252.237-70XX, Service Contract Reporting Requirements, is added to apply to

solicitations and contracts for the acquisition of commercial items.

- At DFARS 237.17X, a new section is added that provides the scope and applicability of the DoD service contract reporting requirement. Additionally, the contracting officer's or contracting officer's representative's duties for ensuring and documenting compliance are outlined. The reporting requirements contained in the proposed rule apply to all solicitations, contracts, and task and delivery orders, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items if the acquisition is for the provision of (1) services with a total estimated value exceeding the simplified acquisition threshold, or (2) supplies that contain separate line items for services with a total estimated value exceeding the simplified acquisition threshold. Exceptions are provided for construction of structures and facilities, lease/rental of equipment or facilities, utilities, freight and shipping, and classified services.

- A new clause is added, 252.237-XX, Service Contract Reporting Requirements, which contains the DoD service contract reporting requirement. Data subject to this clause must be entered into the ECMRA database no later than October 31st each year or at the end of the contract performance period, whichever comes

first. Contractors are required to include the substance of the clause in subcontracts that may include services.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

DoD does not expect this proposed rule to have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because the data collection requirement has been tailored to maximize the use of existing records already maintained by contractors. However, an Initial Regulatory Flexibility Act analysis has been prepared and is summarized as follows:

This DFARS case was initiated to implement the contractual reporting requirements that originate from Title 10, United States Code (U.S.C.), section 2330a titled *Procurement of Services: Tracking of Purchases*. Section 2330a requires the Secretary of Defense to submit to Congress, no later than June 30th of each fiscal year, an annual inventory of service contracts performed during the preceding fiscal year.

This rule establishes the contractual requirement for contractors to report manpower data for prime contractors and subcontractors for each purchase of services in excess of the simplified acquisition threshold on an annual basis or at the end of contract performance, whichever comes first. To streamline reporting, the rule incorporates the use of a DoD-developed software application, Enterprise-wide Contractor Manpower Reporting Application (ECMRA). The rule exempts the following from reporting:

- Construction of structures and facilities.
- Lease and rentals of equipment or facilities.
- Utilities.
- Freight and shipping.
- Classified services.

DoD will use the reported manpower data to fulfill its statutory reporting requirement to Congress pursuant to 10 U.S.C. 2330a. Access to this data will provide DoD with the

ability to identify and report the inventory of contractor full-time equivalent direct labor and associated costs for service contract actions. As an adjunct, the information will support DoD's total force management and in making strategic workforce planning decisions pursuant to 10 U.S.C. 129a. The information will also enable DoD to comply with 10 U.S.C. 235.

The information collection stemming from DFARS clause, 252.237-70XX, Service Contract Reporting Requirements, requires contractors to enter manpower reporting data into ECMRA. The contractor data entry includes contract and order details, such as location of services including product service codes, and direct labor hours and dollars invoiced amounts for each reportable contract action.

The reporting requirement applies to all classes of small business concerns with DoD contracts or subcontracts that contain service requirements that exceed the simplified acquisition threshold. Based on a review of Fiscal Year 2013 data from the Federal Procurement Data System (FPDS), it is estimated that the total number of small businesses that will be impacted by this rule is 7,962. This requirement is not expected to impose a significant economic burden on small business concerns.

The burden applied to small businesses is the minimum consistent with applicable laws, Executive Orders, regulations

and prudent business practices. The information collection requirement has been refined to maximize the use of existing records already maintained by contractors and by the Government. To further minimize the impact, the information will be collected electronically, help-desk support will be provided to users, and reporting requirements will be limited to a small number of easy-to-obtain data elements. The ECMRA database makes maximum use of drop-down menus and pre-populated data fields. For example, award information such as whether the contract or order is performance based, the extent of competition, or award made to a small business, contract funding and organization information will be pre-populated by the COR. No additional alternatives were identified that would that would reduce impact on small business and still accomplish the objectives of the statute and the policies.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2012-D051), in correspondence.

V. Paperwork Reduction Act

The rule contains information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35). Accordingly, DoD has submitted a request for approval of a new information collection requirement concerning DFARS Case 2012-D051, DoD Service Contract Reporting Requirements, to the Office of Management and Budget. Once cleared by OMB, the information collection associated with DFARS Case 2012-D051 will supersede OMB Control Number 0704-0491 titled *DoD Inventory of Contracts for Services Compliance*, which expires on May 31, 2015, and which is not associated with rulemaking.

A. Public reporting burden for this collection of information is estimated to average 1.4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden estimated as follows:

Respondents: 13,269.

Responses per respondent: approximately 4.1

Total annual responses: 54,234.

Average hours per response: 1.4 hours

Total response Burden Hours: 76,141.

B. Request for Comments Regarding Paperwork Burden.

Written comments and recommendations on the proposed information collection, including suggestions for reducing this burden, should be sent to Ms. Jasmeet Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503, or e-mail Jasmeet_K._Seehra@omb.eop.gov, with a copy to the Defense Acquisition Regulations System, Attn: Ms. Janetta Brewer, OUSD(AT&L)DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301-3060. Comments can be received from 30 to 60 days after the date of this notice, but comments to OMB will be most useful if received by OMB within 30 days after the date of this notice.

Public comments are particularly invited on: whether this collection of information is necessary for the proper performance of functions of the DFARS, and will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Defense Acquisition Regulations System, Attn: Ms. Janetta Brewer, OUSD(AT&L)DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301-3060, or e-mail osd.dfars@mail.mil. Include DFARS Case 2012-D051 in the subject line of the message.

List of Subjects in 48 CFR Parts 212, 237, and 252

Government procurement.

Manuel Quinones,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 212, 237, and 252 are proposed to be amended as follows:

1. The authority citation for parts 212, 237, and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 212 - ACQUISITION OF COMMERCIAL ITEMS

2. Section 212.301 is amended by—

a. Redesignating paragraphs (f)(lvii) through (lxx) as (f)(lviii) through (lxxi); and

b. Adding a new paragraph (f)(lvii) to read as follows:

212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

(f) * * *

(lvii) Use the clause at 252.237-70XX, Service Contract Reporting Requirements, as prescribed in 237.17X-5.

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PART 237 - SERVICE CONTRACTING

3. Amend subpart 237.1 by adding section 237.17X to read as follows:

* * * * *

237.17X Service contract reporting.

237.17X-1 Scope.

This section implements section 807 of the National Defense Authorization Act for Fiscal Year 2008, Pub. L. 110-181 (10 U.S.C. 2330a), which requires the Secretary of Defense to annually report to Congress an inventory of the activities performed during the preceding fiscal year pursuant to contracts for services for or on behalf of the DoD.

237.17X-2 Applicability.

(a) Except as identified in paragraph (b), this section applies to service contracts and orders with a total estimated value exceeding the simplified acquisition threshold, and supply contracts and orders with separate line items for services with

a total estimated value exceeding the simplified acquisition threshold.

(b) This section does not apply to separate line items in contracts and orders for—

(1) Construction of structures and facilities (product or service code (PSC) Group Y);

(2) Lease/rental of equipment or facilities (PSC Groups W and X);

(3) Utilities (PSC Group S1);

(4) Freight and shipping (PSC Groups V0, V1, and V2); and

(5) Classified services.

237.17X-3 Service contract reporting requirements.

(a) The contracting officer's representative (COR), when appointed, or the contracting officer, if no COR is appointed, is responsible for ensuring the contractor has completed the reporting requirement in the clause at 252.237-70XX.

Contracting officers shall verify that the contractor's ECMRA compliance is documented.

(b) Waiver. (1) The contracting officer shall prepare a determination and findings when data required to comply with the clause at 252.237-70XX cannot reasonably be made available in a timely manner. The determination and findings shall be approved at one level above the contracting officer.

(2) Upon approval, the contracting officer shall notify the requiring activity and the contractor.

237.17X-4 Contract clause.

Use the clause at 252.237-70XX, Service Contract Reporting Requirements, in solicitations, contracts, and task or delivery orders, including those using FAR part 12 procedures for the acquisition of commercial items, if—

(a) The acquisition is for the provision of services with a total estimated value exceeding the simplified acquisition threshold; or

(b) The acquisition is for the provision of supplies that contain separate line items for services with a total estimated value exceeding the simplified acquisition threshold.

PART 252 - SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Add section 252.237-70XX to read as follows:

252.237-70XX Service Contract Reporting Requirements.

As prescribed in 237.17X-5, use the following clause, and if not all line items are covered, indicate in the Schedule which line items are covered by the clause:

SERVICE CONTRACT REPORTING REQUIREMENTS (DATE)

(a) Except as provided in paragraph (c) of this clause, the Contractor shall —

(1) Report all required prime contract and subcontract data, or require any subcontractors to report separately, using the Enterprise-wide Contractor Manpower Reporting Application (ECMRA) database, and

(2) Enter data for all line items subject to this clause into the ECMRA at the end of each Government fiscal year and not later than October 31 or at the end of the contract performance period, whichever comes first.

(b) Information regarding ECMRA is available on the Internet at <http://www.ecmra.mil>.

(c) The Contractor may request a waiver if the data required to comply with the clause cannot reasonably be made available in a timely manner. See Defense Federal Acquisition Regulation Supplement 237.17X-3.

(d) *Subcontractor information.* The Contractor shall include the substance of this clause, including this paragraph (c), in subcontracts that may include services.

(End of clause)